

Regular Session, 2010

HOUSE BILL NO. (Substitute for House Bill No. 1205 by Representative Harrison)

BY REPRESENTATIVE HARRISON

HOMELAND SECURITY: Creates the Louisiana Taxpayer and Citizen Protection Act of 2010

1 AN ACT

2 To enact Chapter 21 of Title 49 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 49:1311 through 1323, relative to immigration; to provide with respect to
4 eligibility for public benefits, post-secondary education benefits, and employment;
5 to provide for verification of citizenship status; to provide with respect to law
6 enforcement; to create certain crimes; to provide for penalties; to provide for
7 definitions; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Chapter 21 of Title 49 of the Louisiana Revised Statutes of 1950,
10 comprised of R.S. 49:1311 through 1323, is hereby enacted to read as follows:

11 CHAPTER 21. THE LOUISIANA TAXPAYER AND CITIZEN PROTECTION ACT

12 OF 2010

13 PART 1. GENERAL PROVISIONS

14 §1311. Title

15 This Chapter may be cited as the "Louisiana Taxpayer and Citizen Protection
16 Act".

17 §1312. Legislative intent

18 The Louisiana Legislature finds that illegal immigration has resulted in
19 economic hardship and lawlessness within the state and that illegal immigration is
20 encouraged when public agencies provide public benefits without verifying

1 immigration status. The Louisiana Legislature declares that there is a compelling
2 state interest in the cooperative enforcement of federal immigration laws throughout
3 the state of Louisiana. The legislature further declares that the intent of this Chapter
4 is to make attrition through enforcement the public policy of all agencies and
5 political subdivisions of Louisiana. The provisions of this Chapter are intended to
6 discourage and deter the unlawful entry and presence by persons unlawfully present
7 in the United States.

8 §1313. Definitions; construction

9 A. For purposes of this Chapter, the following definitions shall apply:

10 (1) "Contractor" or "subcontractor" as used in this Section, includes any
11 contract employee, staffing agency, or any contractor or subcontractor.

12 (2) "Illegal alien" shall mean any person not lawfully present in the United
13 States. Except as otherwise provided or clearly indicated from the context in which
14 it is used, "illegal alien" shall also include persons defined by any term used in
15 federal law relative to immigration, including but not limited to "unauthorized alien",
16 "unqualified alien", and "alien not lawfully present in the United States".

17 (3) "Public employer" means any department, agency, or instrumentality of
18 the state or a political subdivision thereof, or the recipient of a grant of more than
19 fifty thousand dollars.

20 (4) "Status verification system" means an electronic system operated by the
21 federal government, through which a public or private employer located in this state
22 or a political subdivision of this state may make an inquiry, by exercise of authority
23 delegated pursuant to federal law, to verify or ascertain the employment
24 authorization status of any individual to whom an offer of employment has been
25 made in this state. The status verification system shall be deemed to include either
26 of the following:

27 (a) The electronic verification of work authorization program of the Illegal
28 Immigration Reform and Immigration Responsibility Act of 1996, P.L. 104-208,

1 Division C, Section 403(a); 8 U.S.C. 1324a, and operated by the United States
2 Department of Homeland Security, known as the E-Verify Program.

3 (b) Any equivalent federal program designated by the United States
4 Department of Homeland Security or any other federal agency authorized to verify
5 the work eligibility status of newly hired employees, pursuant to the Immigration
6 Reform and Control Act of 1986 (IRCA), P.L. 99-603.

7 B. The provisions of this Chapter shall be implemented in a manner
8 consistent with federal laws regulating immigration, protecting the civil rights of all
9 persons, and respecting the privileges and immunities of United States citizens.

10 PART II. PUBLIC BENEFITS

11 §1314. Public benefits

12 A. Except as provided in Subsection C of this Section or where exempted by
13 federal law, each agency and political subdivision of this state, as defined in Article
14 VI, Section 44(2) of the Constitution of Louisiana, shall verify the lawful presence
15 in the United States of any natural person fourteen years of age or older who has
16 applied for state or local public benefits, as defined in 8 U.S.C. 1621, or for federal
17 public benefits, as defined in 8 U.S.C. 1611, which are administered by any agency
18 or a political subdivision of this state.

19 B. The provisions of this Section shall be enforced without regard to race,
20 religion, gender, ethnicity, or national origin.

21 C. Verification of lawful presence pursuant to the provisions of this Section
22 shall not be required for any of the following:

23 (1) For health care services or goods that are necessary for the treatment of
24 an emergency medical condition, as defined in 42 U.S.C. 1396b(v)(3), for the illegal
25 alien involved if the services or goods are not related to an organ transplant
26 procedure.

27 (2) For short-term, noncash, in-kind emergency disaster relief.

1 (3) For immunizations and public health assistance with respect to diseases
2 and for testing and treatment of symptoms of communicable diseases whether or not
3 such symptoms are caused by a communicable disease.

4 (4) For assistance, programs, and services such as food banks, crisis
5 counseling and intervention services, and short-term shelter services specified by the
6 United States Secretary of Homeland Security, with the sole discretion of the
7 secretary after consultation with appropriate federal agencies and departments which:

8 (a) Deliver in-kind services at the community level through public or private
9 nonprofit agencies.

10 (b) Do not condition the provision of assistance, the amount of assistance
11 provided, or the cost of assistance provided on the income, resources, or residency
12 of the individual recipient.

13 (c) Are necessary for the protection of life or safety.

14 D.(1) Verification of lawful presence in the United States by the agency or
15 political subdivision required to make such verification shall require that the
16 applicant execute an affidavit under penalty of perjury stating that he is either a
17 United States citizen or a qualified alien as defined by 8 U.S.C. 1641.

18 (2) The applicant shall be responsible for the payment of notary public
19 services for the execution of the affidavit required by Paragraph 1 of Subsection D
20 of this Section.

21 E. For any applicant who has executed the affidavit described in Paragraph
22 1 of Subsection D of this Section, eligibility for benefits shall be verified through the
23 Systematic Alien Verification for Entitlements (SAVE) Program operated by the
24 United States Department of Homeland Security or an equivalent program
25 designated by the United States Department of Homeland Security. Until such
26 eligibility verification is made, the affidavit may be presumed to be proof of lawful
27 presence for the purposes of this Section.

28 F. Any person who knowingly and willfully makes a false, fictitious, or
29 fraudulent statement of representation in an affidavit executed pursuant to

1 Subsection D of this Section may be charged with the crime of false swearing as
2 provided by R.S. 14:125. If the affidavit constitutes a false claim of citizenship
3 under 18 U.S.C. 911, a complaint shall be filed by the agency requiring the affidavit
4 with the United States Attorney's Office for the applicable district as determined by
5 the location in which the affidavit was executed.

6 G. Agencies and political subdivisions of this state may adopt by regulation
7 variations to the requirements of this Section if the variations demonstrably improve
8 the efficiency or reduce delay in the verification process or provide for adjudication
9 of unique individual circumstances where the verification procedures would impose
10 unusual hardship on an individual who is a legal resident of Louisiana.

11 H. It shall be unlawful for any agency or a political subdivision of this state
12 to provide any state, local, or federal benefit, as defined in 8 U.S.C. 1621 or 8 U.S.C.
13 1611 in violation of the provisions of this Section.

14 I. Each state or local agency or department which administers any program
15 of federal, state, or local public benefits shall provide an annual report to the office
16 of inspector general which details compliance by each agency or department. The
17 report shall include information regarding applications for benefits made by illegal
18 aliens, and any incidence of fraud, abuse, or application verification errors or
19 significant delays. The inspector general shall publish an annual report, which shall
20 be made available for public inspection, disclosing public benefits provided to legal
21 aliens. The report may also include recommendations to reduce fraud and abuse by
22 illegal aliens and to ensure that the application of the SAVE program does not
23 erroneously deny benefits to eligible legal residents of Louisiana.

24 PART III. HIGHER EDUCATION

25 §1315. Postsecondary education benefits; eligibility

26 A. An illegal alien shall not be eligible on the basis of residence within the
27 state for any postsecondary education public benefit including but not limited to
28 resident tuition, restricted admissions programs for disadvantaged or minority
29 applicants, scholarships, work-study programs, or financial aid.

1 B. The provisions of Subsection A of this Section shall not apply to any
2 student who has received a resident tuition benefit and is currently enrolled in any
3 degree program at a postsecondary educational institution within this state if he
4 initially enrolled prior to or during the 2010-2011 school year.

5 PART III. COOPERATIVE IMMIGRATION LAW ENFORCEMENT

6 §1316. Verification of status upon booking; bond determination; transfer of
7 detainees to federal custody

8 A. At the time of booking, any peace officer causing an arrest to be made
9 shall attempt to verify the citizenship status of the person arrested and such status
10 shall be included in the entry of arrest and summary bookings maintained by the law
11 enforcement agency.

12 B.(1) If the person arrested is not a citizen or national of the United States,
13 the peace officer having custody of the person arrested shall attempt to verify
14 whether the person arrested is lawfully or unlawfully present in the United States
15 pursuant to federal immigration law.

16 (2) If verification of lawful status cannot be confirmed by documents in the
17 possession of the arrested person, verification shall be made through a query to the
18 Law Enforcement Support Center of the United States Department of Homeland
19 Security, or other office or agency designated for that purpose by the United States
20 Department of Homeland Security. The peace officer shall attempt to complete the
21 verification prior to releasing the arrested person from custody. If the arrested
22 person is verified to be an illegal alien, his immigration status and the basis for
23 verification shall be included in the record of arrest maintained by the law
24 enforcement agency or by the state. If the lawful immigration status of the person
25 arrested cannot be verified prior to his release, the arresting law enforcement agency
26 shall notify the United States Department of Homeland Security.

27 C. For the purpose of determining the granting or issuance of bail for an
28 arrested person whose immigration status has been verified pursuant to Subsection
29 B of this Section as being unlawful, there shall be a rebuttable presumption that the

1 arrested person is a flight risk.

2 D.(1) Notwithstanding any other provision of law to the contrary, a law
3 enforcement agency may securely transport an arrested person in its custody who has
4 been verified as being an illegal alien to a federal facility in this state or to any other
5 point of transfer into federal custody that is outside the jurisdiction of the law
6 enforcement agency.

7 (2) If the point of transfer is located outside of this state, the illegal alien
8 shall be served with a copy of a detainer request issued by a federal immigration
9 officer or with a record of judicial authorization for such transfer before the transfer
10 may occur.

11 §1317. Criminal offenses

12 A. It shall be unlawful for any person to move, transport, or attempt to
13 transport any illegal alien within this state in furtherance of the illegal presence of
14 the alien in the United States, when the offender knows or should have known that
15 the alien has entered or remained in the United States illegally.

16 B. It shall be unlawful for any person to harbor, conceal, or shelter from
17 detection any illegal alien in any place within this state, including both movable and
18 immovable property, when the offender knows or should have known that the alien
19 has entered or remained in the United States illegally and when either of the
20 following occur:

21 (1) The offender obtained or intended to obtain a profit, valuable
22 consideration, or commercial advantage from any criminal offense described in this
23 Section.

24 (2) The offender commits another criminal offense within this state while
25 engaged in the perpetration of any of the criminal offenses contained in this Section.

26 C. It shall be unlawful for any illegal alien lacking employment authorization
27 to knowingly apply for work, solicit work in a public place, or perform work for
28 compensation in this state, as an employee or as independent contractor.

29 D. Nothing in this Section shall be construed to impose criminal penalties

1 on the basis of immigration status, and for recipients or beneficiaries of emergency,
2 first responder, or child protective services, or for regulated public health services.

3 E.(1)(a) Except as provided in Subparagraph (b) of this Paragraph, for a first
4 conviction, whoever commits any offense involving the moving, transporting,
5 attempting to transport, harboring, concealing, or sheltering of any illegal alien shall
6 be fined not less than five hundred dollars, imprisoned not more than six months, or
7 both.

8 (b) Whoever commits an offense involving the moving, transporting,
9 attempting to transport, harboring, concealing, or sheltering of six or more illegal
10 aliens shall be fined not less than one thousand dollars for each illegal alien assisted
11 and imprisoned for not less than one year.

12 (2) Upon a subsequent conviction, whoever commits an offense involving
13 the moving, transporting, attempting to transport, harboring, concealing, or
14 sheltering of any illegal alien shall be fined not less than one thousand dollars for
15 each illegal alien assisted and imprisoned for not less than one year.

16 §1318. Memorandum of understanding

17 A. The attorney general of this state is authorized and directed to negotiate
18 the terms of a memorandum of understanding between the state of Louisiana and the
19 United States Department of Justice or the United States Department of Homeland
20 Security, as provided by 8 U.S.C. 1357(g), relative to the enforcement of federal
21 immigration and customs laws, detention, removals, and investigations in the state
22 of Louisiana.

23 B. The memorandum of understanding shall be signed on behalf of the state
24 of Louisiana by the attorney general of this state and by the governor or other public
25 official as provided by the appropriate federal agency.

26 C. Nothing in this Section shall be construed to require an agreement with
27 a federal agency in order for any officer or employee of a state or political
28 subdivision to communicate with the appropriate federal agency regarding the
29 immigration status of any individual, including reporting knowledge of the presence

1 of any illegal alien, or to otherwise cooperate with the appropriate federal agency in
2 the identification, apprehension, detention, or removal of illegal aliens.

3 §1319. Restriction on local ordinances; right of action

4 A. No local government, whether acting through its governing body or by
5 an initiative, referendum, or any other process, shall enact or implement any
6 ordinance or policy that limits or prohibits a law enforcement officer, local official,
7 or local government employee from communicating or cooperating with federal
8 officials or agencies with regard to the immigration status of any person within this
9 state.

10 B. Notwithstanding any other provision of law to the contrary, no
11 government entity or official within this state may prohibit or in any way restrict any
12 government entity or official from exchanging information with the United States
13 Department of Homeland Security regarding the citizenship or immigration status
14 of any individual.

15 C. Notwithstanding any other provision of law to the contrary, no person or
16 agency may prohibit or in any way restrict any public employee from requesting,
17 receiving, or sending information regarding the immigration status of any individual
18 to or from the United States Department of Homeland Security, maintaining such
19 information, or exchanging such information with any other federal, state, or local
20 government entity.

21 D. The provisions of Sections R.S. 49:1314, 1315, and 1319 shall authorize
22 any natural or juridical person lawfully domiciled in this state to file for a writ of
23 mandamus to compel any noncooperating local or state governmental agency to
24 comply with requirements of this Section.

25 PART IV. IMMIGRATION AND WORK AUTHORIZATION STATUS

26 §1320. Work authorization status verification system

27 A.(1) No later than March 15, 2011, every public employer shall register
28 with and utilize a status verification system to verify the federal employment
29 authorization status of all new employees. No public employer shall enter into a

1 contract for services to be performed or provided within this state, unless the
2 contractor has registered and participates in the status verification system to verify
3 the work eligibility status of all new employees.

4 (2) The provisions of this Subsection shall not apply to contracts entered into
5 prior to August 15, 2010, even if such contracts may involve the performance of
6 services within the state of Louisiana after such date.

7 B. No employee shall be discharged or retaliated against in any other
8 manner, by his employer, for making a complaint to the employing entity, the United
9 States Department of Homeland Security, any law enforcement agency, or the
10 Louisiana Department of Labor alleging that employment in Louisiana is
11 unauthorized.

12 C. Any employment entity who was enrolled in, and used, a status
13 verification system to verify the employment eligibility of employees hired after
14 August 15, 2010 shall be exempt from liability under the provisions of this Section
15 for a discharge of any illegal alien that occurs on or after that date.

16 D. Any natural or juridical person lawfully domiciled in this state may file
17 for a writ of mandamus to compel any noncooperating public employer or contractor
18 to comply with requirements of this Section.

19 §1321. Identification documents

20 A. Notwithstanding any other provision of law to the contrary, the following
21 entities may create, publish, or otherwise manufacture an identification document,
22 identification card, or identification certificate and may possess an engraved plate
23 or other such device for the printing of such identification provided that the name of
24 the issuing entity is clearly printed upon the face of the identification:

25 (1) Businesses, companies, corporations, service organizations, and federal,
26 state, and local governmental agencies for use as employee identification which is
27 designed to identify the bearer as an employee.

28 (2) Businesses, companies, corporations, and organizations for use as
29 identification which is designed to identify the bearer as a customer or member.

1 (3) Federal, state, and local government agencies for purposes authorized or
2 required by law or any legitimate purpose consistent with the duties of such an
3 agency including but not limited to voter identification cards, driver licenses, special
4 identification cards, passports, birth certificates, and social security cards.

5 (4) Any public, private, or parochial school to identify the bearer as an
6 administrator, faculty member, student, or employee.

7 (5) Any professional organization or labor union to identify the bearer as a
8 member.

9 (6) Businesses, companies, or corporations which manufacture medical-alert
10 identification for the wearer thereof.

11 B.(1) Identification documents as provided in Paragraph 3 of Subsection A
12 of this Section shall be issued only to United States citizens, nationals, and legal
13 permanent resident aliens.

14 (2) Identification documents as provided in Paragraph 4 of Subsection A of
15 this Section shall be issued only to United States citizens, nationals, and legal
16 permanent resident aliens unless the identification document is only valid for use on
17 the campus or facility of the educational institution and includes a statement of such
18 restricted validity clearly and conspicuously printed upon the face of the
19 identification document.

20 C. The provisions of Subsection B of this Section shall not apply when an
21 applicant presents, in person, valid documentary evidence of any of the following:

22 (1) A valid, unexpired immigrant or nonimmigrant visa status for admission
23 into the United States.

24 (2) A pending or approved application for asylum in the United States.

25 (3) Admission into the United States with refugee status.

26 (4) A pending or approved application for temporary protected status in the
27 United States.

28 (5) Approved deferred action status.

29 (6)(a) A pending application for adjustment of status to legal permanent

1 residence status or conditional resident status.

2 (b) Upon approval, the applicant for adjustment of status may be issued an
3 identification document provided for in Paragraph 3 and 4 of Subsection A of this
4 Section. Such identification document shall be valid only during the authorized stay
5 of the applicant in the United States or, if there is no definite end to the period of
6 authorized stay, it shall be valid for a period of one year. Any identification
7 document issued pursuant to the provisions of this Section shall clearly indicate that
8 the identification is temporary and shall state the date that the identification
9 document expires. Such identification document may be renewed only upon
10 presentation of valid documentary evidence that the status by which the applicant
11 qualified for the identification document has been extended by the United States
12 Citizenship and Immigration Services or other authorized agency of the United
13 States Department of Homeland Security.

14 E. The requirements of Subsection C of this Section shall apply to the first
15 renewal, the duplication and the reissuance of a driver's license or special
16 identification card issued prior to August 15, 2010. The provisions of this
17 Subsection shall not apply to United States citizens, nationals, or legal permanent
18 resident aliens.

19 §1322. Fraudulent documents identification unit

20 Subject to the availability of funding, the attorney general of this state shall
21 establish a Fraudulent Documents Identification (FDI) Unit for the primary purpose
22 of investigating and apprehending persons or entities that participate in the sale or
23 distribution of fraudulent documents used for identification purposes. The unit shall
24 provide specialized training to state and local government agencies in the detection
25 of fraudulent identification documents created or prepared for illegal aliens residing
26 in the state of Louisiana. The attorney general of this state shall employ sufficient
27 employees to investigate and implement an FDI Unit.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Harrison

HB No.

Abstract: Creates the Louisiana Taxpayer and Citizen Protection Act of 2010 to provide with respect to verification of citizenship status of residents of Louisiana as it relates to employment, educational benefits, public benefits, identification, arrest, criminal offenses, and law enforcement.

Proposed law creates the Louisiana Taxpayer and Citizen Protection Act of 2010.

Proposed law requires that agencies use the SAVE program to verify the citizenship status for persons ages 14 and older who apply for public benefits, except for certain emergency services in certain situations and for the prevention and treatment of communicable diseases.

Proposed law further provides that as a temporary verification of citizenship status while awaiting confirmation by the SAVE program, an applicant for public services shall execute a notarized affidavit stating that he is a United States citizen or a qualified alien.

Proposed law provides that any illegal alien who enrolls in a post-secondary institution within the state of Louisiana after the 2010-2011 school year shall not be eligible for any resident tuition benefit, restricted admission program for disadvantaged or minority applicants, work-study program, or financial aid.

Proposed law provides that upon booking, an arresting law enforcement officer shall verify the citizenship status of the arrested person.

Proposed law requires law enforcement agencies to attempt to verify the citizenship status of an arrested person before release from custody. If his status cannot be verified before his release, the agency shall notify the U.S. Dept. of Homeland Security.

Proposed law specifies that if the arrested person is an illegal alien, the law enforcement agency may transfer him into federal custody.

Proposed law creates the crimes of unlawfully moving, transporting, attempting to transport, harboring, concealing, or sheltering an illegal alien if the offender knew or should have known the person is unlawfully present in the U.S., and specifies penalties for conviction of those crimes.

Proposed law provides that it is unlawful for any illegal alien who lacks employment authorization to seek employment.

Proposed law authorizes the attorney general to negotiate a memorandum of understanding between the state of Louisiana and the federal government relative to the enforcement of immigration laws.

Proposed law prohibits local governing bodies from enacting any ordinance which would limit cooperation in the enforcement of immigration laws.

Proposed law requires every public employer to utilize a status verification system to verify employment authorization status for all new employees.

Proposed law allows certain entities to manufacture identification documents, cards or

certificates only to U.S. citizens, nationals or legal permanent resident aliens unless the identification clearly indicates a specific and limited use or if the applicant presents evidence that he is lawfully present in the United States.

Proposed law requires that, subject to availability of funding, the attorney general shall establish a fraudulent document identification unit to investigate and apprehend persons in violation of this Chapter.

(Adds R.S. 49:1311-1323)